

## **Focus**

### - A new agreement between the Consumer Ombudsman and the Danish Financial Supervisory Authority

With effect from 1 May 2013, the Danish Marketing Practices Act and the Financial Business Act were amended, and the Consumer Ombudsman was assigned additional powers in relation to matters regarding financial businesses. In continuation of the amendment, the Consumer Ombudsman and the FSA entered into a [cooperation agreement](#) (In Danish) 2 September 2013, which describes the framework of their mutual cooperation in this area. In this newsletter, we focus on the amendment, the cooperation agreement and the practical implications the changes entail for financial businesses.

## **The Amendment**

From 1 May 2013, the rules regarding the Consumer Ombudsman's jurisdiction over financial companies were modified in two ways.

### **Scope of the Marketing Practices Act**

The rules in the Marketing Practices Act on misleading and improper marketing, purchase requests and credit agreements now also apply to financial businesses. Financial businesses are now only exempt from the Marketing Practices Act with regards to the rules on fair marketing practice, disclosure of prices in marketing material and information in connection with the provision of credit.

### **Extension of the Powers of the Financial Business Act**

Before 1 May 2013, the Financial Business Act contained a provision that authorised the Consumer Ombudsman to take legal action against financial businesses in respect of acts contrary to honest business principles and good practice. With the amendment, the Consumer Ombudsman is now also authorised to examine cases regarding the violation of the criminal provisions in the the Executive Order on risk labeling of investment products (the traffic light system). Unlike before, the Consumer Ombudsman is now also authorised to carry out an actual review of certain cases, which among other things includes the opportunity to negotiate with the financial business and thus influence behavior, to carry out inspections and to provide advance notice of proposed measures, unlike under the previous legislation, which only allowed for the Consumer Ombudsman to take legal action against the financial business.

The amendment, which expanded the Consumer Ombudsman's powers, did not contain a corresponding reduction of the FSA's competence, and it is this situation which has necessitated that the framework for cooperation between the Consumer Ombudsman and the FSA be determined on a separate basis.

## **The Agreement between the Consumer Ombudsman and the FSA**

The cooperation agreement between the Consumer Ombudsman and the FSA initially emphasises that the agreement should be read in conjunction with the rule in the Financial Business Act stating that the FSA has a duty to inform the Consumer Ombudsman about cases in which consumers may have an economic claim against a financial business.

The cooperation is to consist of collaborative meetings at executive level every six months, where the general strategic issues of the cooperation will be discussed.

In addition, quarterly meetings are to be held at a head of departments level, where it, at a minimum, must be discussed which new cases may affect the other authority, which cases are under review, planned, ongoing projects as well as new or pending legislation.

The Cooperation Agreement also establishes some general cooperation procedures which include, among other things, written submissions from the other party before a decision is made, the relationship with the Financial Council and coordination in relation to inquiries from journalists, etc.

In connection with the Consumer Ombudsman's legal actions under the Financial Business Act, the Consumer Ombudsman is to inform the FSA when the matter is addressed and, if relevant, discuss the matter with the FSA.

Cases regarding deception and pricing information may be processed by both authorities, and in this area, the agreement establishes a general rule for the allocation of cases, according to which the FSA in general will handle the case. However, this does not apply if the offense involves both a financial and a non-financial business. In that case, the case will, as a starting point, be handled by the Consumer Ombudsman, who, before the case is reviewed, will discuss the matter with the FSA to ensure that the matter will not be reviewed by both authorities. If there is disagreement as to who should review the case, it must be determined at executive level. Cases regarding purchase information, etc. are, as a starting point, reviewed by the Consumer Ombudsman, who, however, should discuss the matter with the FSA before the case is reviewed.

It has been determined that the agreement will be reviewed mid 2014.

## **Some of the practical Implications**

The change of the scope of the Marketing Practices Act implies that the financial institutions now - in addition to the Financial Business Act - may be subject to penalties under the Marketing Practices Act's rules, if the rules on misrepresentation, exhortation and credit agreements are deemed to have been violated. The penalty for such a violation is a fine, unless stated otherwise in any other legislation.

The change also implies that the Marketing Practices Act's negotiation procedures, issuance of injunctions, provisional bans and actions for damages may be used in relation to financial businesses in respect of the said rules. For example, the Consumer Ombudsman will with the amendment be authorised to enforce disclosure requirements in respect of credit agreements facilitated by, for example, supermarkets and car dealers to both the intermediary and the bank if the bank has prepared the flawed marketing material.

Although many of the violations may be criminally sanctioned against, it may in several cases be more appropriate to apply the rules of procedure, prohibitions and injunctions in order to bring the infringement to an end. In many cases, the business in question will presumably change its marketing solely on the basis of a request from the Consumer Ombudsman without further sanctions being necessary. If a business is fined for e.g. deceptive marketing, fines are typically in the range of DKK 15.000-20.000.

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